

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**ALISHA DEXTER and LEMORRIS  
M. DEXTER, II,**

**Plaintiffs,**

**v.**

**Civil Action No.  
5:14-CV-0363 (TJM/DEP)**

**OFFICER A. MAHAR, *et al.*,**

**Defendant.**

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**THOMAS J. McAVOY,  
Senior United States District Judge**

**DECISION & ORDER**

**I. INTRODUCTION**

This action was referred to the Hon. David E. Peebles, United States Magistrate Judge, for a Report and Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). No objections to Magistrate Judge Peebles's Report and Recommendation [dkt. # 31] have been filed, and the time to do so has expired.<sup>1</sup>

**II. DISCUSSION**

Magistrate Judge Peebles indicates in his report:

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<sup>1</sup>The Report Recommendation was served on Plaintiffs at their last known address, P.O. Box 197 Syracuse, NY, but both were returned as undeliverable. Every litigant is required to keep the Court advised of his or her address so that documents and decisions may be served upon them by mail. See Local Rules of the United States District Court for the Northern District of New York, 10.1(b), 41. (2) & (b). Failure to do so can greatly delay proceedings and, therefore, can be construed as an abandonment of the action.

Under the circumstances, the Court deems that Plaintiffs intentionally failed to file any objections and have abandoned this action.

Although this case is in its formative procedural stages, plaintiffs have already demonstrated an unacceptable lack of cooperation with defendants' counsel in formulating a joint civil case management plan in accordance with this court's directives and Northern District of New York General Order No. 25, and have failed to appear in person as directed by the court on two occasions. Based upon that conduct, I recommend plaintiffs' complaint be dismissed for failure to prosecute pursuant to Rule 41 of the Federal Rules of Civil Procedure.

Rep. Rec. p. 2.

Magistrate Judge Peebles further writes:

Through their actions, plaintiffs have demonstrated a repeated failure to cooperate with both defendants' counsel and the court so that this action can be fairly, efficiently, and timely adjudicated on its merits. Based upon their failure to comply with the court's orders, in particular the order that they appear and show cause why this action should not be dismissed, I conclude that dismissal of plaintiffs' complaint is warranted. Accordingly, it is hereby respectfully

RECOMMENDED that plaintiffs' complaint be *sua sponte* DISMISSED, with prejudice, based upon their failure to prosecute and to appear as required by court order.

Id. p. 10.

After examining the record, this Court has determined that the Report and Recommendation is not subject to attack for plain error or manifest injustice. However, because copies of the Order to Show Cause, which were served on plaintiffs at their last known address, were returned as undeliverable after the Report and Recommendation was issued, the Court will conclude that plaintiffs abandoned this action, see fn. 1, *supra*, as opposed to willfully disobeyed a court order. Accordingly, the dismissal will be without prejudice.

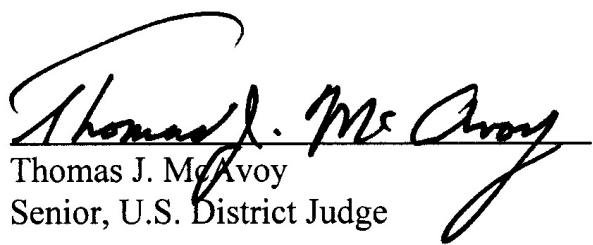
### **III. CONCLUSION**

For the reasons stated here and the Report and Recommendation, the Court **ADOPTS in substantial part** the Report and Recommendation [dkt. # 31]. Plaintiffs'

complaint is *sua sponte* **DISMISSED**, without prejudice, for failure to prosecute and as abandoned.

**IT IS SO ORDERED.**

**Dated:**January 20, 2015



The image shows a handwritten signature in black ink, which appears to read "Thomas J. McAvoy". Below the signature, there is a horizontal line. Underneath the line, the name "Thomas J. McAvoy" is printed in a standard font, followed by "Senior, U.S. District Judge".